

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

<b>CXT SYSTEMS, INC.,</b>	§	
	§	
<b>Plaintiff,</b>	§	<b>Case No. 2:18-cv-00171-RWS-RSP</b>
	§	
<b>v.</b>	§	<b>(LEAD CASE)</b>
	§	
<b>ACADEMY, LTD., d/b/a ACADEMY</b>	§	
<b>SPORTS + OUTDOORS,</b>	§	
	§	
<b>PIER 1 IMPORTS, INC.,</b>	§	<b>Case No. 2:18-cv-00172-RWS-RSP</b>
<b>THE CONTAINER STORE GROUP, INC.</b>	§	<b>Case No. 2:18-cv-00173-RWS-RSP</b>
<b>CONN'S, INC.,</b>	§	<b>Case No. 2:18-cv-00231-RWS-RSP</b>
<b>FOSSIL GROUP, INC.,</b>	§	<b>Case No. 2:18-cv-00232-RWS-RSP</b>
<b>J. C. PENNEY COMPANY, INC.,</b>	§	<b>Case No. 2:18-cv-00233-RWS-RSP</b>
<b>STAGE STORES, INC.,</b>	§	<b>Case No. 2:18-cv-00234-RWS-RSP</b>
<b>TAILORED BRANDS, INC.,</b>	§	<b>Case No. 2:18-cv-00235-RWS-RSP</b>
	§	
<b>Defendants.</b>	§	<b>(CONSOLIDATED CASES)</b>
	§	

## FIRST AMENDED DOCKET CONTROL ORDER

It is hereby **ORDERED** that the following schedule of deadlines is in effect until further order of this Court:

<b>Current Date</b>	<b>Deadline</b>
February 18, 2020	*Jury Selection – 9:00 a.m. in <b>Marshall, Texas</b> before Judge Robert W. Schroeder
January 23, 2020	*Pretrial Conference – 9:00 a.m. in <b>Marshall, Texas</b> before Judge Roy S. Payne
January 16, 2020	<p>*Notify Court of Agreements Reached During Meet and Confer</p> <p>The parties are ordered to meet and confer on any outstanding objections or motions <i>in limine</i>. The parties shall advise the Court of any agreements reached no later than 1:00 p.m. three (3) business days before the pretrial</p>

	conference.
January 14, 2020	*File Joint Pretrial Order, Joint Proposed Jury Instructions, Joint Proposed Verdict Form, Responses to Motions in Limine, Updated Exhibit Lists, Updated Witness Lists, and Updated Deposition Designations
January 7, 2020	<p>*File Notice of Request for Daily Transcript or Real Time Reporting.</p> <p>If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Shelly Holmes, at <a href="mailto:shelly_holmes@txed.uscourts.gov">shelly_holmes@txed.uscourts.gov</a>.</p>
December 31, 2019	<p>File Motions in Limine</p> <p>The parties shall limit their motions in limine to issues that if improperly introduced at trial would be so prejudicial that the Court could not alleviate the prejudice by giving appropriate instructions to the jury.</p>
December 31, 2019	Serve Objections to Rebuttal Pretrial Disclosures
December 17, 2019	Serve Objections to Pretrial Disclosures; and Serve Rebuttal Pretrial Disclosures
December 10, 2019	Serve Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List) by the Party with the Burden of Proof
November 12, 2019	<p>*File Motions to Strike Expert Testimony (including <i>Daubert</i> Motions)</p> <p>No motion to strike expert testimony (including a <i>Daubert</i> motion) may be filed after this date without leave of the Court.</p>

November 12, 2019	<p>*File Dispositive Motions</p> <p>No dispositive motion may be filed after this date without leave of the Court.</p> <p>Motions shall comply with Local Rule CV-56 and Local Rule CV-7. Motions to extend page limits will only be granted in exceptional circumstances. Exceptional circumstances require more than agreement among the parties.</p>
November 12, 2019	Deadline to Complete Expert Discovery
October 22, 2019	Serve Disclosures for Rebuttal Expert Witnesses
October 1, 2019	Deadline to Complete Fact Discovery and File Motions to Compel Discovery
October 1, 2019	Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof
October 1, 2019	**Final Election of Asserted Prior Art
September 3, 2019	**Final Election of Asserted Claims
August 29, 2019	<p>Deadline to Complete Mediation</p> <p>The parties are responsible for ensuring that a mediation report is filed no later than 5 days after the conclusion of mediation.</p>
August 22, 2019	Comply with P.R. 3-7 (Opinion of Counsel Defenses)
August 1, 2019	*Claim Construction Hearing – 9:00 a.m. in Marshall, Texas before Judge Roy S. Payne
July 18, 2019	*Comply with P.R. 4-5(d) (Joint Claim Construction Chart)
July 11, 2019	*Comply with P.R. 4-5(c) (Reply Claim Construction Brief)
June 28, 2019	Comply with P.R. 4-5(b) (Responsive Claim Construction Brief)
June 12, 2019	Comply with P.R. 4-5(a) (Opening Claim Construction Brief) and Submit Technical Tutorials (if any)

	Good cause must be shown to submit technical tutorials after the deadline to comply with P.R. 4-5(a).
June 20, 2019	Deadline to Substantially Complete Document Production and Exchange Privilege Logs  Counsel are expected to make good faith efforts to produce all required documents as soon as they are available and not wait until the substantial completion deadline.
June 6, 2019	Comply with P.R. 4-4 (Deadline to Complete Claim Construction Discovery)
May 30, 2019	File Response to Amended Pleadings
May 16, 2019	*File Amended Pleadings  It is not necessary to seek leave of Court to amend pleadings prior to this deadline unless the amendment seeks to assert additional patents.
May 16, 2019	Comply with P.R. 4-3 (Joint Claim Construction Statement)  **With respect to U.S. Patent Nos. 6,493,703, 6,571,234 and RE45,661 ("Knight Patents") for Defendant Academy, Ltd. d/b/a Academy Sports + Outdoors only
May 9, 2019	Comply with P.R. 4-3 (Joint Claim Construction Statement)

(\*) indicates a deadline that cannot be changed without showing good cause. Good cause is not shown merely by indicating that the parties agree that the deadline should be changed.

(\*\*) indicates a new deadline

### ADDITIONAL REQUIREMENTS

**Notice of Mediator:** The parties are to jointly file a notice that identifies the agreed upon mediator or indicates that no agreement was reached. If the parties do not reach an agreement, the Court will appoint a mediator. The parties should not file a list of mediators to be considered by the Court.

**Summary Judgment Motions, Motions to Strike Expert Testimony, and Daubert Motions:** For each motion, the moving party shall provide the Court with two (2) copies of the completed briefing (opening motion, response, reply, and if applicable, surreply), excluding exhibits, in D-three-ring binders, appropriately tabbed. All documents shall be single-sided and must include the CM/ECF header. For expert-related motions, complete digital copies of the relevant expert report(s) and accompanying exhibits shall be submitted on a single flash drive. These copies shall be delivered as soon as

briefing has completed.

**Indefiniteness:** In lieu of early motions for summary judgment, the parties are directed to include any arguments related to the issue of indefiniteness in their *Markman* briefing, subject to the local rules' normal page limits.

**Motions for Continuance:** The following excuses will not warrant a continuance nor justify a failure to comply with the discovery deadline:

- (a) The fact that there are motions for summary judgment or motions to dismiss pending;
- (b) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
- (c) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

**Amendments to the Docket Control Order ("DCO"):** Any motion to alter any date on the DCO shall take the form of a motion to amend the DCO. The motion to amend the DCO shall include a proposed order that lists all of the remaining dates in one column (as above) and the proposed changes to each date in an additional adjacent column (if there is no change for a date the proposed date column should remain blank or indicate that it is unchanged). In other words, the DCO in the proposed order should be complete such that one can clearly see all the remaining deadlines and the changes, if any, to those deadlines, rather than needing to also refer to an earlier version of the DCO.

**Proposed DCO:** The Parties' Proposed DCO should also follow the format described above under "Amendments to the Docket Control Order ('DCO')."

**SIGNED this 9th day of May, 2019.**

  
ROY S. PAYNE  
UNITED STATES MAGISTRATE JUDGE